Council Regulation (EC) No 15/2009 of 8 January 2009 amending Regulation (EC) No 367/2006 imposing a definitive countervailing duty on imports of polyethylene terephthalate (PET) film originating in India and amending Regulation (EC) No 1292/2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India

COUNCIL REGULATION (EC) No 15/2009

of 8 January 2009

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community[(1)] (the basic Regulation), and in particular Articles 19 and 24 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROCEDURE

I. Previous investigation and existing countervailing measures

(1) In December 1999, by Regulation (EC) No 2597/1999[(2)], the Council imposed a definitive countervailing duty on imports of polyethylene terephthalate (PET) film (the product concerned) falling within CN codes ex 3920 62 19 and ex 3920 62 90, originating in India. The investigation which led to the adoption of that Regulation is hereinafter referred to as the 'original investigation'. The measures took the form of an *ad valorem* countervailing duty, ranging between 3,8 % and 19,1 % imposed on imports from individually named exporters, with a residual duty rate of 19,1 % imposed on imports of the product concerned from all other companies. The investigation period of the original investigation was 1 October 1997 to 30 September 1998.

(2) In March 2006, by Regulation (EC) No 367/2006[(3)], the Council, following an expiry review pursuant to Article 18 of the basic Regulation, maintained the definitive countervailing duty imposed by Regulation (EC) No 2597/1999 on imports of PET film originating in India. The review investigation period was 1 October 2003 to 30 September 2004.

(3) In August 2006, by Regulation (EC) No 1288/2006[(4)], the Council, following an interim review concerning the subsidisation of an Indian PET film producer, Garware

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Polyester Limited (Garware), amended the definitive countervailing duty imposed on Garware by Regulation (EC) No 367/2006.

(4) In September 2007, by Regulation (EC) No 1124/2007[(5)], the Council, following a partial interim review concerning the subsidisation of another Indian PET film producer, Jindal Poly Films, Limited, formerly known as Jindal Polyester Ltd, (Jindal), amended the definitive countervailing duty imposed on Jindal by Regulation (EC) No 367/2006.

II. Existing anti-dumping measures

(5) In August 2001, by Regulation (EC) No 1676/2001[(6)], the Council imposed a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating, inter alia, in India. The measures consisted of an *ad valorem* anti-dumping duty ranging between 0 % and 62,6 % imposed on imports from individually named exporters, with a residual duty rate of 53,3 % on imports from all other companies.

(6) In March 2006, by Regulation (EC) No 366/2006[(7)], the Council amended the level of dumping margins calculated by Regulation (EC) No 1676/2001. The new dumping margins range between 3,2 % and 29,3 % and the new dumping duty range between 0 % and 18 % taking into account the countervailing duties resulting from export subsidies imposed on the same products originating in India, as modified according to Regulation (EC) No 367/2006, which was adopted following an expiry review of Regulation (EC) No 2579/1999 referred to in recital 1 above. In August 2006, by Regulation (EC) No 1288/2006, the Council, following an interim review concerning the subsidisation of an Indian PET film producer, Garware Polyester Limited (Garware), amended the definitive anti-dumping duty imposed on Garware by Regulation (EC) No 1676/2001.

(7) In September 2006, by Regulation (EC) No 1424/2006[(8)], the Council, following a new exporting producer request amended Regulation (EC) No 1676/2001 in respect of SRF Limited. The Regulation established a dumping margin of 15,5 % and a dumping duty rate of 3,5 % for the company concerned taking into account the company's export subsidy margin as ascertained in the anti-subsidy investigation which led to the adoption of Regulation (EC) No 367/2006 referred to above. Since the company did not have an individual countervailing duty, the rate established for all other companies was applied.

(8) The Council, by Regulation (EC) No 1292/2007[(9)] imposed a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community[(10)] (the basic anti-dumping Regulation). The same Regulation terminated a partial interim review of such imports limited to one India exporter pursuant to Article 11(3) of the basic anti-dumping Regulation.

III. Initiation of a partial interim review

(9) Following the extension of the validity of the definitive countervailing duty in March 2006, the Government of India (GOI) made submissions that the circumstances with regard to two subsidy schemes (the Duty Entitlement Passbook Scheme and the Income Tax Exemption under Section 80 HHC of the Income Tax Act) had changed and that these changes were of a lasting nature. Consequently, it was argued that the level of subsidisation was likely to have decreased and thus measures that had been established partly on these schemes should be revised.

(10) The Commission examined the evidence submitted by the GOI and considered it sufficient to justify the initiation of a review in accordance with the provisions of Article 19 of the basic Regulation. After consultation of the Advisory Committee, the Commission initiated, by a Notice of Initiation published in the *Official Journal of the European Union* on 12 October 2007[11], an *ex officio* partial interim review limited to the level of subsidisation of the countervailing duty in force in respect of imports of polyethylene terephthalate (PET) film originating in India.

(11) The purpose of the partial interim review investigation is to assess the need for the continuation, removal or amendment of the existing measures in respect of those companies which benefited from one or both subsidy schemes that had allegedly changed, where sufficient evidence was provided in line with the relevant provisions of the Notice of Initiation. The partial interim review investigation would also assess the need, depending on the review findings, to revise the measures applicable to other companies that cooperated in the investigation that set the level of the existing measures and/or the residual measure applicable for all other companies.

(12) The review was limited to the level of subsidisation of the companies listed in the Annex to the Notice of Initiation as well as to other exporters that were invited to make themselves known under the conditions and within the time limit set out in the Notice of Initiation.

IV. Investigation period

(13) The investigation of the level of subsidisation covered the period from 1 October 2006 to 30 September 2007 (‘review investigation period’ or ‘RIP’).

V. Parties concerned by the investigation

(14) The Commission officially informed the GOI and those Indian exporting producers who cooperated in the previous investigation, were mentioned under Regulation (EC) No 367/2006 and were listed in the Annex to the Notice of Initiation of the partial interim review, that were found to benefit from any of the two allegedly changed subsidy schemes, as well as Du Pont Tejin Films, Luxembourg, Mitsubishi Polyester Film, Germany, Toray Plastics Europe, France and Nurell, Italy, which represent the overwhelming majority of Community PET film production (hereinafter the Community industry), of the initiation of the partial interim review investigation. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of Initiation.

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(15) All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(16) The written and oral comments submitted by the parties were considered and, where appropriate, taken into account.

(17) In view of the apparent number of parties involved in this review, the use of sampling techniques for the investigation of subsidisation was envisaged in accordance with Article 27 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, exporting producers were requested, pursuant to Article 27 of the basic Regulation, to make themselves known within 15 days of the initiation of the partial interim review and to provide the Commission with the information requested in the Notice of Initiation.

(18) After examination of the information submitted, given the number of exporting producers in India indicating their willingness to cooperate, it was decided that sampling was not necessary in this case.

(19) One company, SRF Limited, not listed in the Annex to the Notice of Initiation, made itself known and provided evidence that it fulfilled the eligibility provisions of the scope of the partial interim review investigation as those set out in point 4 of the Notice of Initiation. Consequently this company was included in this review investigation.

(20) One company, Flex Industries Limited, subject to a countervailing duty (Regulation (EC) No 367/2006) and an anti-dumping duty (Regulation (EC) No 1292/2007) has changed its name and is now known as Uflex Limited. This change of name does not affect the findings of previous investigations.

(21) In order to obtain the information necessary for its investigation, the Commission sent questionnaires to the exporting producers which fulfilled the conditions set out in the Notice of Initiation. In addition, a questionnaire was sent to the GOI.

(22) Replies from the questionnaires were received from five Indian exporting producers, and from the GOI.

(23) The Commission sought and verified all information it deemed necessary for the determination of subsidisation. Verification visits were carried out at the premises of GOI in Delhi, the Government of Maharashtra in Mumbai, the Reserve Bank of India in Mumbai, and the following companies:

— Ester Industries Limited, New Delhi,

— Garware Polyester Limited, Mumbai,

— Polyplex Corporation Limited, Noida,

— SRF Limited, Gurgaon,

— Uflex Limited, Noida.

VI. Disclosure and comments on procedure

(24) The GOI and the other interested parties were informed of the essential facts and considerations upon which it was intended to propose to amend the duty rates applicable to the concerned cooperating Indian exporting producers and prolong existing measures for all other companies which did not cooperate with this partial interim review. They were also given a reasonable time to comment. All submissions and comments were taken duly into consideration as set out below.

B. PRODUCT CONCERNED

(25) The product covered by this review is the same product as the one concerned by Regulation (EC) No 367/2006, namely polyethylene terephthalate (PET) film falling within CN codes ex 3920 62 19 and ex 3920 62 90 originating in India.

C. SUBSIDISATION

1. Introduction

Nationwide schemes

(26) On the basis of the information submitted by the GOI and the cooperating Indian exporting producers and the replies to the Commission's questionnaire, the following schemes, which allegedly involve the granting of subsidies, were investigated:

(a) Advance Authorisation Scheme (formerly known as Advance Licence Scheme);

(b) Duty Entitlement Passbook Scheme;

(c) Export Promotion Capital Goods Scheme;

(d) Special Economic Zones/Export Processing Zones/Export Oriented Units;

(e) Income Tax Exemption Scheme;

(f) Export Credit Scheme;

Regional schemes

(g) Package Scheme of Incentives (PSI).

(27) The schemes (a) to (d) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 (Foreign Trade Act). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in 'Export and Import Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly. One Export and Import Policy document is relevant to the RIP of this case, i.e. the five-year plan relating to the period 1 September 2004 to 31 March 2009 (EXIM-policy 04-09). In addition, the GOI also sets out the procedures governing the EXIM-policy 04-09 in a 'Handbook of Procedures — 1 September 2004 to 31 March 2009, Volume I' (HOP I 04-09). The Handbook of Procedure is also updated on a regular basis.